



April 12, 2019

The Women's Legal Education and Action Fund
1402- 180 Dundas St West
Toronto, ON
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Dear Honourable Justice Richard Blouin,

This is a community impact statement prepared by the Women's Legal Education and Action Fund (LEAF) pursuant to s. 722.2 of the *Criminal Code* in the sentencing of James Sears and Leroy St. Germaine.

About LEAF

LEAF is a national, non-profit organization founded in April 1985 to advance the equality rights of women and girls in Canada as guaranteed by the Canadian Charter of Rights and Freedoms. To this end, LEAF intervenes in litigation and engages in law reform and public education. LEAF is the only national organization that exists to advance the equality rights of women and girls under the law.

LEAF's work to strengthen equality rights is informed by a unique, consultative process that engages expertise from feminist legal academics, lawyers and activists across Canada. LEAF's work is also informed by its broad and diverse membership, which includes women of all ages and backgrounds.

As a result of its breadth of experience with litigation, law reform and public education, LEAF has considerable expertise in articulating how laws and policies advance or undermine substantive equality for women and girls, including and often especially those who confront discrimination on multiple and intersecting grounds like sex, gender, marital or family status, race, sexual orientation, disability, Indigenous ancestry, and socio-economic status. LEAF has expertise in examining the material conditions of women's lives and how those conditions impact women's equality, safety, and human dignity.

LEAF has particular expertise in the impact of hate speech and other forms of hate crimes on women's rights. As an intervener before the Supreme Court of Canada in *R v Keegstra*, [1990] 3 SCR 697 ("*Keegstra*"), *Canada (Canadian Human Rights Commission) v Taylor*, [1990] 3 SCR 892 ("*Taylor*"), and *Saskatchewan (Human Rights Commission) v Whatcott*, [2013] 1 SCR 467, ("*Whatcott*") LEAF argued

that challenges to the regulation of hate speech engage constitutional equality rights as much as freedom of expression, since the willful promotion of group hatred constitutes a practice of inequality which fundamentally erodes the equality rights of members of the targeted group. Through these interventions, including working with committees consisting of national experts, LEAF has developed particular expertise in the relationship between misogynist and sexist hate speech and women's equality rights.

Hate Speech and Women's Equality

LEAF has reviewed the written material produced by James Sears and Leroy St. Germaine and the expert evidence of Professor Janine Benedet. It provides the following statement to comment on the impact of the defendants' written materials on women.

As the Supreme Court of Canada found in *Taylor*, hate expression is a practice of discrimination causing harm to vulnerable groups and to society.¹ Sexist hate speech in particular "is a form of violence against women and girls that perpetuates and exacerbates gender inequality."² This impact statement outlines the following gendered harms:

1. Hate speech against women injures women's dignity and causes psychological harm;
2. Hate speech against women undermines women's safety from violence;
3. Hate speech against women perpetuates stereotypes and erects or reinforces barriers to women's social, economic, and political participation.

1. *Hate speech causes psychological harm and injures human dignity:*

Hate speech injures women's human dignity and causes psychological harm. This has been recognized by the Supreme Court of Canada in its foundational judgments dealing with hate speech.³ The derision, hostility and abuse encouraged by hate speech have a profound negative effect on the individual's sense of self-worth, dignity and acceptance. Hate speech humiliates and degrades its targets,⁴ and is linked to depression, fear, loss of self-esteem, and withdrawal from society.⁵

In regards to sexist hate speech, the Council of Europe's Gender Equity Strategy studied hate speech against women, and concluded that "the aim of sexist hate speech is to humiliate or objectify women, to undervalue their skills and opinions, to destroy their reputation, to make them feel vulnerable and fearful, and to control and punish them for not following a certain behaviour."⁶ The material at issue in this sentencing hearing fits clearly into this category of speech.

¹ *Canada (Canadian Human Rights Commission) v Taylor*, [1990] 3 SCR 892 at 918-919.

² Council of Europe Gender Equality Strategy, "Combating Hate Speech" (2016) online at: [https://rm.coe.int/1680651592\("Combating Hate Speech"\)](https://rm.coe.int/1680651592()

³ *R v Keegstra*, [1990] 3 SCR 697 at 745-747, 286; *Taylor*, *supra* note 1 at 918.

⁴ *Oger v Whatcott*, 2019 BCHRT 58 at para 143.

⁵ R Delgado and J Stefancic, *Understanding Words that Wound* (Boulder: Westview Press, 2004), at 13-15

⁶ *Combating Hate Speech*, *supra* note 2 at 5.

This hateful material impacts women as a group, and causes harm to individual women. Through the widespread distribution of Your Ward News, up to thousands of individual women in Toronto were subjected to hateful mail undervaluing their intelligence, their worth in society, and their right to be free from violence. The emotional pain caused by returning home from work, school, or other endeavours to find hateful messages promoting sexual violence and undermining women's capacities on one's doorstep is significant.

Further, this kind of speech causes women psychological harm. A recent Amnesty International study into online gender-based harassment provides insight into the consequences of hate speech. In the study, 61% of women said they'd experienced some form of gender-based harassment and experienced lower self-esteem or loss of self-confidence as a result. More than half said they had experienced stress, anxiety or panic attacks after experiencing online abuse or harassment, and up to three quarters indicated that the gender-based harassment and hate speech impacted their sleep and concentration. Receiving gender-based hate speech, whether online or in a newsletter left on one's doorstep, has significant consequences for women's emotional well-being.

This harm is exacerbated for racialized women who, in the defendants' materials, are particularly denigrated on the basis of race and gender.⁷ The Human Rights Tribunal of Ontario has recognized that "compound discrimination" on the basis of multiple, intersecting grounds of discrimination such as race and gender exacerbates the mental anguish of the discrimination.⁸ As such, racialized women, who face disproportionate disadvantage in Canadian society, are also likely to have been disproportionately harmed by the defendants' newsletters.

Further, the particular materials promoting physical and sexual violence⁹ can cause or exacerbate psychological trauma. In Canada, 1 in 3 women will experience some form of sexual assault in their lifetime.¹⁰ In 2014 alone, 555,000 women reported being sexually assaulted.¹¹ Survivors of sexual assault report experiencing shame, self-blame, depression, PTSD, self-harm, substance abuse, suicide and other negative consequences.¹² It follows that 1 in 3 of the thousands of women who received the defendants' newsletters will have experienced some form of sexual violence, and many will have experienced consequent psychological trauma. Receiving mail that champions rape myths, blames women for the sexual violence committed against them, advocates for rape, and proudly advocates for sexual and physical violence risks exacerbating that trauma and causing women serious psychological harm.

2. Hate speech increases women's exposure to physical and sexual violence

⁷ *R v James Sears and Leroy St. Germaine*, 2019 ONCJ 104, Appendix A at 1 ("Appendix A").

⁸ 2003 HRTO 28 at 143-145.

⁹ *Appendix A*, *supra* note 9, at 2-6.

¹⁰ Statistics Canada, *Measuring Violence Against Women*, Statistical Trends 2006, Catalogue no 85-570 XIE (2006) at 24.

¹¹ Marie Sinha, Canadian Centre for Justice Statistics, *Measuring Violence Against Women: Statistical Trends* (2013) at page 14.

¹² Ross Macmillan, "Violence and the Life Course: The Consequences of Victimization for Personal and Social Development" (2001) 27 *Annual Review of Sociology* 1 at 8; RAINN (Rape, Abuse & Incest National Network) "Effects of Sexual Violence", online: <https://www.rainn.org/effects-sexual-violence>

The material distributed by the defendants in this case promotes violence against women, including extreme forms of physical and sexual violence. The impact is two-fold: it risks inspiring men to engage in sexist violence, and it makes women feel unsafe in their communities.

i. Promoting or increasing violence against women

The Supreme Court of Canada has recognized that hate propaganda may produce an increase in acts of discrimination and incidents of violence.¹³ In this case, the defendants' newsletters advocate for violence against women, including sexual abuse and intimate partner violence. These forms of gender-based violence are at a crisis level in Canada: in 2018, 148 women were killed in Canada, and 91% were killed by men.¹⁴ Women are four times more likely than men to be killed by intimate partners.¹⁵ Material that promotes and advocates violence against women may encourage or embolden men to act on violent impulses against women. As the Supreme Court of Canada accepted in *Whatcott and Keegstra*, hate speech "lays the groundwork for discrimination, marginalization and violence."¹⁶

Indeed, the continuum between expression, discrimination, and violence has been described in social science research as well as jurisprudence. Historical lessons show that "hate-filled ideologies lie at the heart of human tragedies."¹⁷ Law professor Alexander Tsesis explains this phenomenon as follows:

Violence against outgroups is not perpetrated in a social vacuum. There is a close, and virtually necessary, connection between advocacy, preparation, coordination, infrastructure development, training, indoctrination, desensitization, discrimination, singular violent acts, and systematic oppression. Those things take time and have more impact than spontaneous acts of violence instigated by phrases uttered in the heat of the moment.¹⁸

The speech contained in Sears and St. Germaine's newsletters can be understood as part of this preparation, training, and desensitization that is both a cause and an effect of a culture of normalized violence against women.

As outlined in Professor Benedet's expert report, the defendants' newsletter also traffics in racialized sexism, and in particular uses anti-Black racism to denigrate Black women as sexual slaves and promote racialized

¹³ *Taylor*, *supra* note 1 at 919.

¹⁴ Canadian Femicide Observatory for Justice and Accountability, "#CallItFemicide: Understanding gender-related killings of women and girls in Canada 2018" (Canada: Social Sciences and Humanities Research Council of Canada, 2018); online: <https://femicideincanada.ca/callitfemicide.pdf>.

¹⁵ David, J-D. "Homicide in Canada, 2016" (2017) Juristat, Canadian Centre for Justice Statistics, Statistics Canada, Catalogue no 85-002-X.

¹⁶ *Oger*, *supra* note 4 at para 143.

¹⁷ Alexander Tsesis, *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements* (New York: New York University Press, 2002) at 1, and later giving examples such as the Holocaust and U.S. slavery in the antebellum South; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 147-148; KE Mahoney, "Speech, Equality, and Citizenship in Canada" (2010) 39 Comm L World Rev 69 at 73.

¹⁸ Alexander Tsesis, "Hate in Cyberspace: Regulating Hate Speech on the Internet" (2001) 38 San Diego L Rev 817 at 841.

sexual violence against Black women.¹⁹ The newsletter therefore contributes to a culture in which Black, Indigenous, and Women of Colour are particularly targeted for sexual violence and domestic abuse.²⁰

ii. Increases women's fear

Further, quite apart from whether the readership of Your Ward News will in fact be incited to violence, the newsletter impacts women's experience of safety and security. Women receiving this written material live with the knowledge that men in their community believe that women deserve violence. This logically causes women to be more fearful in their communities,²¹ which in turn causes women to increase their precautions and limit their own behaviour. The defendants' newsletter undermines the fundamental right of women to live free from the threat of violence.

In assessing the risk that sexist hate speech will increase acts of violence against women, one must be attentive to the individual cases of mass sexist violence. In 1989, 13 women were murdered by a man who sought to murder feminists.²² Your Ward News vilifies feminists and blames them for societal problems. Similarly, the Toronto van attack referenced by Justice Blouin²³ was also apparently inspired by online forums that promote violent and misogynist hate against women.²⁴

As noted by you, Justice Blouin, the relationship between material demonizing feminists and acts of mass violence against women viewed as feminists is still undergoing investigation.²⁵ However, the relationship is intuitive, and the risk of such a relationship is a life-threatening one that must be taken very seriously. Further, the rise of this violent misogynist ideology, and the acts of mass violence that appear to accompany this ideology,²⁶ shape women's experience of their own safety in society. Receiving newsletters that promote ideology that has been publicly linked to acts of mass murder contributes to women's fear of being targeted for gender-based violence, up to and including murder.

3. Hate speech perpetuates stereotypes and reinforces barriers to women's equality

The hate speech published in Your Ward News risks contributing to prejudice and bias against women, which impacts women's material opportunities and equal participation in social, political, and economic life. As the Supreme Court of Canada held in *Whatcott*:

¹⁹ *Appendix A, supra* note 9 at 1-2.

²⁰ Shana Conroy and Adam Cotter, "Self-reported Sexual Assault in Canada, 2014" (2017) 37 *Juristat* 1 (Canadian Centre for Justice Statistics) at 8.

²¹ H Johnson and M Dawson, *Violence Against Women in Canada: Research and Policy Perspectives*. (Don Mills, ON: Oxford University Press, 2011).

²² The Guardian, "The Montreal massacre: Canada's feminists remember" (3 Dec 2012); online: <https://www.theguardian.com/world/2012/dec/03/montreal-massacre-canadas-feminists-remember>

²³ *R v Sears and St Germaine, supra* note 9 at para 13.

²⁴ The Globe and Mail "Suspect in Toronto van attack publicly embraced misogynist ideology" (24 April 2018); online: <https://www.theglobeandmail.com/canada/article-facebook-post-connected-to-suspect-in-van-rampage-cites-incel/>.

²⁵ *R v Sears and St Germaine, supra* note 9 at para 13.

²⁶ See note 25; see also The New York Times "The Manifesto of Elliot Rodger" (24 May 2014); online: <https://www.nytimes.com/interactive/2014/05/25/us/shooting-document.html>.

Hate speech is, at its core, an effort to marginalize individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society. When people are vilified as blameworthy or undeserving, it is easier to justify discriminatory treatment.²⁷

Hate speech is so potent because it resonates with and reinforces deeply rooted racist, sexist and homophobic narratives and stereotypes in society. The reinforcement of negative stereotypes leads to denial of opportunities. The Supreme Court of Canada acknowledged this in *Taylor*, writing that hate propaganda can convince listeners, even if subtly, that members of certain groups are inferior.²⁸ “The result may be an increase in acts of discrimination, including the denial of equal opportunity in the provision of goods, services and facilities, and even incidents of violence.”²⁹

The publications in *Your Ward News* may very well contribute to sexist and misogynist stereotypes that lead to women being denied opportunities and interfere with women’s equality. In this way, the defendants’ speech harms women as a group.

Sexist hate speech also has a profound effect on women’s fundamental freedoms. The Supreme Court of Canada in *Whatcott* recognized that hate speech has a tendency to silence the voice of the targeted group,³⁰ meaning that women’s free expression is chilled by gender-based hate speech.³¹ More broadly, hate propaganda deprives members of the target group from fearless and open participation in society.³² The materials at issue in this case targeted individual women who had participated in some public way in society, including Kathleen Wynne and defence lawyer Breese Davies, in the form of misogynist speech and cartoons. This channels a clear message to women that they engage in public or political life at risk of having derogatory images and messages published about them and distributed throughout their community.

It is logical that this would be a significant disincentive for many women who would otherwise seek opportunities in public life. Indeed, the UN has documented the worldwide trend of female political figures being particularly targeted with gender-based harassment and threats of violence. The aim of such attacks is to “discourage women from being politically active and exercising their human rights and to influence, restrict or prevent the political participation of individual women and women as a group.”³³ Chilling women’s participation in politics and public positions impacts women’s equality. As feminists have long argued, representation of women matters, whether in the public sector or private, for women’s equal rights and opportunities.

²⁷ *Saskatchewan (Human Rights Commission) v Whatcott*, [2013] 1 SCR 467, at para 71.

²⁸ *Taylor*, *supra* note 1 at 918-919.

²⁹ *Ibid.*

³⁰ *Whatcott*, *supra* note 30 at para 114.

³¹ *Ross v New Brunswick School District No. 15*, [1996] 1 SCR 825 at para 91.

³² OM Fiss, *The Irony of Free Speech* (Cambridge: Harvard University Press, 1996) at pps 16-18.

³³ *Report of the Special Rapporteur on violence against women, its causes and consequences on violence against women in politics*, UNGAOR, 73d Sess, UN Doct A/73/201 (2018) at 5.

Hate based groups and political movements are increasing in prevalence,³⁴ and a significant feature of this rise in hate-based ideology is misogyny and opposition to women's equality.³⁵ This movement is increasingly influencing mainstream political discourse.³⁶ That the speech contained in Your Ward News exists on a continuum with other less extreme, more subtle forms of misogyny is demonstrated by the defendants' repeated idolization of Donald Trump, in particular his claims to violence against women (e.g. "grab her by the p*ssy"). Rather than being written off as a fringe publication, the defendants' newsletter may be better understood as a more extreme manifestation of a mainstream movement that poses an enormous threat to women's equality.

Conclusion

Hate speech such as that found in the defendants' newsletter causes harm to women as individuals and women as a group. It undermines women's emotional and psychological wellbeing and it increases women's fear, which impacts their free participation in society. It causes psychological harm and trauma. It promotes violence against women, which risks increasing acts of sexual and physical violence against women.

Further, it perpetuates stereotypes against women, which act as barriers to equality for women in all areas of their life. In this way, hate speech serves as a tool of a patriarchal society, perpetuating systemic discrimination against women, with all the consequent outcomes of systemic discrimination including the feminization of poverty, lack of opportunities, and exposure to violence.

LEAF, as an organization that advocates for women's equality, is disturbed but not surprised by the content of Your Ward News. For 34 years LEAF has fought against misogynist and sexist hate speech in various forms, some less extreme and some equally as extreme. The struggle for women's equality, including safety from violence, is far from complete. Part of moving Canadian society closer to that goal is properly recognizing the harm of promoting misogynist views and beliefs.

Yours Sincerely,



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³⁴ See for example, Southern Poverty Law Centre, "Hate groups reach record high" (19 February 2019); online: <https://www.splcenter.org/news/2019/02/19/hate-groups-reach-record-high>.

³⁵ See for example, *When Women are the Enemy: The intersection of misogyny and white supremacy*, Anti-Defamation League Centre on Extremism (2018); online: <https://www.adl.org/media/11707/download>.